

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 60 of 1997
with
CIVIL APPLICATION No 1363 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

CHEMOSYN LTD.

Versus

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD.

Appearance:

MR NH SEERVAI WITH MR PARESH M DAVE for Appellant
MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/07/97

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated December 11, 1996 passed by the City Civil Court, Ahmedabad, rejecting the Notice of Motion filed by the appellant-plaintiff in Civil Suit No. 2140 of 1996. This appeal against the said order was already admitted earlier. When the Civil Application for interim injunction has come up for confirmation or otherwise of

the ad interim injunction, by consent of the learned counsel for the parties, the appeal has been taken up for final hearing.

In the said Notice of Motion it was prayed that the Gujarat Industrial Investment Corporation be restrained from alienating, transferring or disposing of or parting with possession of any part of 7,40,000 shares in the Company called Gujarat Themes Biosyn Limited (hereinafter called as "the GTBL" or "the Company") which was a joint venture Company formed by the appellant Company with 25% share capital and defendant Gujarat Industrial Investment Corporation (hereinafter referred to as " the GIIC") with 26% capital. After initially granting ex-parte ad interim injunction, the trial Court rejected the Notice of Motion.

2. The plaintiff and the defendant-Company had promoted GTBL by an agreement dated May 11, 1981 (Shareholders' Agreement) under which the defendant had a right to take 26% of the share capital and the plaintiff had right to take 25% share capital. The balance 49% was offered to the public making it aggregate equity share capital of Rs. 3 crores divided into 27 lacs equity shares of Rs. 10/- each and 30,000 Preference Shares of Rs. 1,000/- each.

Clause 5 of the agreement provided that the plaintiff "shall not, except with the prior written consent of the Corporation, transfer, sell or encumber in any manner whatsoever their share holdings in the Company during the currency of the agreement or till such time any undertakings or guarantees given by it to the financial institutions, banks or GIIC subsists and continues to be in force".

Clause 7 of the agreement provided that neither party shall transfer or sell its respective equity share holding or any part thereof until the Company has commenced commercial production of erithomycin. Clause 8 conferred right on the defendant-Corporation and the plaintiff respectively to reduce its equity share holding of 26% / 25% to 10% subject to the following terms:-

- (i) The right to reduce Equity shareholding shall be subject to and in accordance with the guidelines for joint-sector projects laid down by Govt.. of India/State Government.
- (ii) The Corporation may sell or transfer its shareholding to the Government of Gujarat or any

institutions, Companies or Corporations of the Government of Gujarat without any restrictions.

(iii) If however, the Corporation intends to sell its Equity to public, the Corporation shall in the first instance offer such share to CPL and the provisions of Clauses (22) and (23) shall apply.

Clause 24 provided - "This agreement shall be in force for a period of 15 years, provided that this may be renewed for a further period by mutual consent".

Clauses 21, 22, 23 & 25 read as under:-

21. After the expiry of the period of Agreement, both CPL and the Corporation shall be free to transfer and sell their respective shareholdings or any part thereof without the prior consent of the other party, subject to clause 22 and 23 hereafter.

22. Any party desiring to sell its shareholding or any portion thereof shall first offer to sell the same to other party. The price payable by one party to the other party in respect of each transactions will be on either of the following factors, whichever is the higher :-

(i) Valuation of the auditors of the Company on the basis of the net worth of the Company on the date of offer, or

(ii) The average price of shares ruling at the stock exchange at which the shares are quoted for the preceding six months of the date of such offer. In the event of a dispute as to the valuation of the shares to be determined in accordance with (i) or (ii) above, the valuation by a reputed firm acceptable to both the Corporation and CPL would be binding on both the parties.

23. The offer shall be communicated by the intending Transferor to the Transferee in writing. The transferee will be entitled to accept the offer in his own name or to the nominate any other persons to accept the same provided such nominee is acceptable to the Company. If, however, the other party refuses to accept the said offer for

all the shares offered or any part thereof or does not exercise its option to purchase the shares so offered within 90 days from the date of the offer, the party transferring or selling its shares shall be free to transfer or sell the same to any other party. It is however agreed that any refusal or failure as aforesaid shall be effective for the period of six months only after which period fresh offer shall have to be made in case of any proposal of transfer of sale."

25. The parties hereto shall be entitled to specific performance of the terms of this Agreement including the obligations contained in the clauses as to the exercise of voting rights.

3. As per the aforesaid agreement, the defendant-GIIC held 26% equity share holding (7.4 lakh shares) in the Company and the plaintiff held 25% equity share holding in the Company. There is no dispute about the fact that the Company commenced commercial production of erythromycin and thereafter on March 11, 1988 a Memorandum of Understanding (hereinafter referred to as "the MOU") was arrived at between the plaintiff and the defendant-Corporation in the following terms:-

"An understanding has been reached that the aforesaid 7.4 lakh Shares will be transferred by GIIC to the Co-promoters as Par Value of Rs. 10/- per Share and the payment for the Shares and for the Unsecured Loan of Rs. 26.00 lacs advanced to M/s. GTBL by GIIC with interest will be paid as per the following Payment Schedule and terms & conditions:

Sr.	Date	Amount	Details
No.		Rs.lacs	

-
- | | | | |
|----|---------------------|----------|---|
| 1. | 14th March,
1988 | Rs. 5.00 | At the time of signing of
Memorandum of
Understanding. |
| 2. | 31st March,
1988 | Rs.20.00 | Two Cheques of Rs. 10.00
lacs each to be
deposited, out of which
first Cheque will be put
in the clearance on 4th |

April, 1988 and second
will be on 20th April,
1988.

3. 30th June,
1988 Rs.25.00 ---

4. 30th Sept.,
1988 Rs.25.00 Out of Rs. 25.00 lacs,
as a part payment on
account of Equity Shares
of Rs. 74.00 lacs and
Rs. 13.00 lacs will be
taken as a payment of
unsecured deposit (part
of Rs.. 26.00 lacs
unsecured deposit given
to GTBL by GIIC).

5. 31st Dec.
1988 Rs.25.00 Out of Rs. 25.00 lacs,
Rs. 12 lacs as a part
payment on account of
Equity Shares of Rs.
74.00 lacs and Rs. 13.00
lacs will be taken as a
payment of unsecured
deposit, but the interest
@ 15% will be charged on
Rs. 25.00 lacs from 1st
October, 1988 until the
full payment is made. In
case of default, an
additional interest at
the rate of 3% will be
charged.

The Share scrips will be transferred by GIIC to
the Co-promoters as and when their amount is
paid, in proportion to the amount so paid.
However, Shares corresponding to Rs. 24.00 lacs
paid on 30th September, 1988 and 31st December,
1988 will be transferred to the Party only after
the full payment of Rs. 26.00 lacs of Unsecured
loan plus interest is paid as per the above
schedule.

This Memorandum of Understanding is subject to
the approval of the concerned financial
institutions."

4. Since the MOU expressly required the approval of the concerned financial institutions i.e. the Industrial Development Bank of India (hereinafter referred to as " the IDBI"), the plaintiff wrote a letter dated May 23, 1988 requesting the IDBI to allow the GIIC to transfer its shares and unsecured loans in the Company (GTBL) in favour of the plaintiff. In response thereto, the IDBI sent their reply dated June 27, 1988 in the following terms.

"In this connection, we advise that having regard to present adverse financial position and unsatisfactory operational performance of GTBL it will be not possible for us to accede to your above request at the present. GIIC and your company, being main promoters of GTBL, are, in fact, expected to play important role in revival of the unit. For your information, proposal for grant of package of reliefs on the part of institutions/banks & promoters is under our examination and you will be advised in the matter shortly."

In view of the aforesaid reply from the IDBI, the GIIC returned the cheque dated 9th August, 1990 of Rs. 15 lacs to the plaintiff being the amount of refund on account of non fulfillment of MOU.

The plaintiff refused to accept the said amount contending that there was no non-fulfillment of MOU on the part of the plaintiff and that the MOU incorporating the agreement and arrangement was irrevocable and final. That view of the plaintiff was conveyed to the GIIC by the plaintiff's letter dated September 15, 1990. Thereupon, GIIC again reiterated its stand and through their Solicitor's letter dated December 29, 1990 contended that there was no contract between the plaintiff and the GIIC as the MOU was subject to the approval of the IDBI but the IDBI had not granted approval. It was specifically stated in the said letter that the MOU was conditional upon the IDBI granting the approval and since the approval was not granted, the cheque of Rs. 15 lacs was returned. The plaintiff further persisted in contending that the MOU was final and irrevocable, both as regards disinvestment of shares by the GIIC and also as regards the price on which the shares were to be transferred from the GIIC to the plaintiff.

5. It appears that by its letter dated January 20, 1995, the plaintiff again put up the matter with the IDBI on the basis of the aforesaid MOU dated March 11, 1988 and requested that in view of the changed circumstances, the IDBI may permit the GIIC and the plaintiff to transfer the shares as per the above MOU. In response to the said request, the IDBI replied on March 9, 1995 as under:-

"In this connection, we advise that on earlier occasion when you had sought similar permission from IDBI, we had vide our letter No. HO. PFC. 21.B.18(836)/16266 dated June 27, 1988 advised you that having regard to the adverse financial position of the company and rehabilitation measures that were contemplated for revival of the company the permission for transfer of shares by GIIC in favour of CML could be kept in abeyance. However, after the induction of Pharmaceutical Business Group (PBG) into the management of GTBL as per the rehabilitation scheme sanctioned by BIFR on April 29, 1991 for GTBL, the shareholding pattern of GTBL has undergone a change. In view of the change in status-quo, you may settle the issue with GIIC in terms of the MOU." (emphasis supplied)

6. The plaintiff, banking on the aforesaid reply of the IDBI, again approached the GIIC with a request to carry out the terms of the MOU. The GIIC rejected the said request by their letter dated March 31, 1995 in view of the following factors:-

- (i) Once the IDBI rejected the proposal as per their letter dated June 27, 1988, the MOU came to an end and the GIIC had therefore refunded the amount of Rs. 15 lacs to the plaintiff, and the position did not change merely because the plaintiff refused to accept the amount.
- (ii) The plaintiff had, in the meantime, transferred their shares in the GTBL to another party without concurrence of the GIIC.

7. The plaintiff again wrote a letter dated April 15, 1995 contending that the MOU was still subsisting and also contending that the shares of the plaintiff in the GTBL were transferred to the Pharmaceutical Business Credit (India) Ltd. with specific knowledge and consent of GIIC and that the said transfer was effected pursuant

to the unanimous resolution passed at the Board meeting of GTBL where the Chairman and the other Directors nominated by the GIIC were also present; and that there was no violation of any clause of the share holders' agreement. The GIIC again reiterated its stand and again returned the cheque of Rs. 15 lacs alongwith their letter dated February 1, 1996 contending that the MOU dated March 11, 1988 had ceased to be operative when the IDBI had earlier disapproved the disinvestment proposal way back in 1988.

8. The plaintiff, however, stuck to its stand and filed Special Civil Application No. 2305 of 1996 before this Court. When that petition came up for hearing, this Court dismissed the petition on the ground that the matter pertained to enforcement of contract which dispute was more appropriate for adjudication by the Civil Court.

9. The plaintiff therefore, filed the present suit on May 2, 1996 for specific performance of the aforesaid MoU and for related and consequential reliefs.

The plaintiff also submitted application ex. 5 praying for the following interim reliefs:-

(a) for appointment of a receiver in respect
of 7,40,000 shares of the Company held by
the defendant together with bonus and/or
rights shares.

(b) for an injunction to restrain the
defendant from transferring or
encumbering the said 7,40,000 shares of
the Company held by the defendant
together with bonus and/or rights shares.

10. The trial court rejected the said application by the order dated December 11, 1996 which is under challenge in the present appeal, on the grounds that:

(1) Although the MOU, although did not describe any time limit within which the approval of IDBI was to be obtained, looking to the time schedule of payment mentioned in the MOU, it became unenforceable after 31st December, 1988 and that payment schedule being essence of the contract, non-approval by the IDBI before 31st December, 1988 made the contract inoperative thereafter.

(2) The MOU cannot be considered to have continued in operation. It came to an end as soon as the IDBI refused to grant approval on June 27, 1988. Hence, the suit based on the MOU and more specifically for specific performance of the MOU was prima facie not maintainable and also prima facie barred by limitation.

(3) The plaintiff had not taken any steps to get the MOU approved by IDBI prior to 1995. This inaction on the part of the plaintiff for such a long period suggests that the plaintiff was not interested in getting the approval of the MOU.

11. It is the aforesaid order dated December 11, 1996 passed by the City Civil Court rejecting the Notice of Motion which is assailed by Mr N.H. Seervai on behalf of the appellant - plaintiff by raising the following contentions :-

(i) The trial Court erred in holding that the reply dated June 27, 1988 from the IDBI amounted to refusal to grant approval for implementation of the MOU in question. All that the said reply conveyed was that it was not possible for the IDBI to accede to the plaintiff's request (for implementation of the MOU) "at present". Hence, it was open to the plaintiff to pursue the matter again with the IDBI which ultimately did grant approval by their letter dated March 9, 1995. Hence, the MOU had remained in existence and operative and the plaintiff was entitled to get the same enforced for specific performance.

(ii) Since the MOU was to be given effect to upon approval by the IDBI, the period of limitation would start running from the date of approval by the IDBI i.e. from March 9, 1995 and, therefore, the present suit filed for specific performance of the MOU in 1996 was very much within the period of limitation.

(iii) The plaintiff was earlier not in a position to get the MOU approved by the IDBI, because the GTBL was a sick Company and it was undergoing revival and rehabilitation under the protective umbrella of the BIFR and, therefore, it was not possible for the plaintiff to get the MOU

approved prior to 1995.

12. On the other hand, Mr H.S. Munshaw, learned counsel for the GIIC (the respondent) made the following submissions :

- (i) Once the MOU could not be implemented in view of non-approval by the IDBI as conveyed by their letter dated June 27, 1988, the MOU came to an end and became inoperative.
- (ii) Without prejudice to the above, the MOU was in any case required to be performed within reasonable time. The very fact that the MOU itself provided for the last payment of Rs. 25 Lakhs to be made by the plaintiff to the defendant Corporation by December 31, 1988 indicated that the IDBI approval was required to be obtained before that date. Hence, after December, 1988, the MOU ceased to be operative.
- (iii) The MOU dated March 11, 1988 was entered into between the plaintiff and the defendant Corporation in their capacity as shareholders of the GTBL. Since the plaintiff had transferred its entire shareholding in favour of another party and it is ceased to be a shareholder of the GTBL, the plaintiff does not have any right to pray for specific performance of the MOU.
- (iv) Even, other wise, the plaintiff had disentitled itself to any relief on the basis of the shareholders agreement or the MOU, because the plaintiff had transferred its shareholding to another party in violation of the specific provisions of Clause (5) of the shareholders agreement.
- (v) In any case, the defendant Corporation does not want to sell its shares to the plaintiff or to any other party at present.

Whether the MOU dated 11.3.1988 was operative on the date of filing of the suit in 1996.

13. It is true that the MOU did not specify any time limit for obtaining approval of the IDBI, but that does not mean that the plaintiff was at liberty to obtain such approval after any length of time. In absence of any stipulated time limit in the MOU, the plaintiff was

nevertheless expected to obtain such approval within reasonable time. Once the IDBI did not grant its approval as per its letter dated June 27, 1988, by any stretch of imagination, a period of 7 years cannot be said to be reasonable time. Even in case of immoveable property where time is not considered to be of the essence of the contract, the Courts will expect that the parties should take necessary steps within reasonable time. Inaction for 2 to 2-1/2 years is also considered to be unreasonable (K.S. Vidyanandam Vs. Vairavan, AIR 1997 SC 1751). In the instant case, we are dealing with an agreement for transfer of shares which is not only moveable property but highly volatile in terms of its price fluctuations.

14. Apart from the above discussion about the length of reasonable time, there is intrinsic indication in the MOU dated March 11, 1988 as well as the shareholders' agreement as to what can be considered to be reasonable period. The MOU required part payment to commence from March 14, 1988 and to end on December 31, 1988. The transfer of shares was to made against payment. Hence, the approval of IDBI was contemplated to be obtained by December 31, 1988.

Moreover, Clause 23 of the agreement throws a flood of light on this aspect. Clauses 22 and 23 which are already quoted hereinabove provide that any party desiring to sell its shareholding shall first offer to sell the same to other party and the price payable for such transactions is to be decided as per the formula prescribed in clause 22 of the agreement. Clause 23 thereafter provides that such offer shall be communicated by the intending transferor to the transferee in writing which may accept the offer in its own name or may nominate any other persons acceptable to the company. Thereafter the material part of clause 23 reads as under:

"If, however, the other party refuses to accept the said offer for all the shares offered or any part thereof or does not exercise its option to purchase the shares so offered within 90 days from the date of the offer, the party transferring or selling its shares shall be free to transfer or sell the same to any other party. If is however agreed that any refusal or failure as aforesaid shall be effective for the period of six months only after which period fresh offer shall have to be made in case of any proposal of transfer of sale." (emphasis supplied)

Thus, even any refusal to accept the offer from the transferor is effective for a period of six months only after which the other party is still entitled to receive fresh offer, in case the transferor still intends to sell its shareholding or a part thereof. Hence, a period of six months from December 31, 1988 can be said to be the outer limit of the reasonable period under any circumstances.

15. Mr Seervai, however, submitted that since the Company was undergoing revival and rehabilitation under the protective umbrella of BIFR, the plaintiff cannot be disentitled from getting specific performance of the MOU merely on the ground that there was a lapse of 7 years between the date of MOU and the date of approval by the IDBI. The contention which may appear to be attractive at the first blush deserves to be rejected for the reasons already stated above that equity shares are a commodity which have wide fluctuations in their sale price. When the company was sick, the defendant Corporation had thought it fit to sell its shareholding at par, but thereafter the Company turned the corner and under the revival and rehabilitation package of the BIFR, the Company got on its feet. The defendant Corporation, is therefore, right in contending that the defendant cannot now be tied down to the price at which it had offered to sell the shares in the year 1988, even though the company is now performing better than before. The defendant Corporation would also be well within its right in contending that the defendant does not want to sell the shares at all at present.

16. In view of the aforesaid discussion, I have no hesitation in holding that the MOU dated March 11, 1988 ceased to be operative after expiry of reasonable time and that the said reasonable period had expired long prior to 1995 when the IDBI purported to give its approval at the behest of the plaintiff. In view of the above finding, the plaintiff would obviously fail in getting any interim injunction on the basis of the MOU.

Whether the plaintiff can get any relief dehors the MOU:-

17. It is true that the foundation of the plaintiff's case in the notice of motion is the MOU of March 11, 1988, but at the same time the plaintiff has also relied on the shareholders agreement dated May 11, 1981. Clauses 21 to 23 of the said agreement contemplate the right of pre-emption; that is, when one of the parties to the agreement intends to sell its shareholding or any part thereof in the GTBL, it is required to make an offer

to the other party. Mr Munshaw for the defendant Corporation submitted that the defendant Corporation is not now bound to offer its shareholding to the plaintiff for the following three reasons :-

- (i) The shareholders agreement came to an end on March 10, 1996 since it was for a period of 15 years only as mentioned in clause 24 of the agreement and that the agreement has not been renewed for any further period.
- (ii) The plaintiff itself is no longer a shareholder in the GTBL and, therefore, the plaintiff is not entitled to get any such right of pre-emption once it has sold its shareholding to another party.
- (iii) The plaintiff sold off its shareholding to another party called Pharmaceutical Business Group (India) Ltd. i.e. PBG without consent of the defendant Corporation, in breach of clause (5) of the shareholders agreement.

18. The aforesaid contentions on behalf of the defendant - Corporation have been opposed by the learned counsel for the appellant-plaintiff on the following lines :-

- (i) Although clause 24 of the agreement stipulates the period of agreement as 15 years, clause 21 of the agreement contemplates that clauses 22 and 23 of the agreement will be applicable even after expiry of the said period.
- (ii) The plaintiff is entitled to exercise its rights including the right of pre-emption under the agreement because it is one of the parties to the agreement and that transfer of its shareholding to any other party does not deprive the plaintiff of its rights under the agreement.
- (iii) The transfer of shares in the GTBL from the plaintiff to the third party was not in contravention of the shareholders' agreement, because -

- (a) Pharmaceutical Business Group (India) Ltd. (PBG) was inducted in the management of GTBL with the specific knowledge and express consent of GIIC.

- (b) An understanding was reached between PBG and the plaintiff and to that effect a letter dated 11.1.1991 was addressed to BIFR jointly by the plaintiff and PBG. A copy of the said letter was also endorsed to GIIC, IDBI and other Institutions and it was specifically stated in the said letter dated 11.1.1991 that the shares held by the plaintiff will be transferred to PBG by mutual consent.
- (c) It is also on record that the representatives of GIIC have always remained present in all proceedings before BIFR.
- (d) Moreover Resolutions were passed unanimously in respect of transfer of shares from the plaintiff to PBG at the Board Meeting of GTBL where the Chairman and the other Directors nominated by GIIC were present.
- (e) These facts clearly establish that the transfer of shares by the plaintiff to PBG was made with the knowledge and consent of GIIC.

19. In my view, the aforesaid controversy whether the plaintiff is still entitled to invoke its rights under the shareholders agreement dated May 11, 1981 can be adjudicated at the trial of the suit, in view of the disputed question of fact whether the transfer of shareholding from the plaintiff to the PBG was in accordance with the terms of the shareholders agreement or not. The other questions pertaining to the scope and ambit of the plaintiff's right of pre-emption even after transfer of its shareholding also raise mixed questions of law and fact on which two views are possible. Consequently, while the plaintiff is not entitled to any injunction against the defendant on the ground of the MOU dated March 11, 1988, the plaintiff has made out a case triable on the aforesaid issue and, therefore, for an interim injunction during the pendency of the suit to restrain the defendant Corporation (GIIC) from transferring its shareholding except in accordance with the provisions of clauses 22 and 23 of the agreement dated May 11, 1981.

20. At this stage, it is necessary to add one rider to the operation of Clause 22 of the shareholders agreement. The same provides for price fixation by reference to the average price of shares ruling at the stock exchange for the preceding six months from the date of offer by the transferor. I am told that the shares in the Company (GTBL) were quoting at comparatively higher rate when the suit came to be filed. In order to see that the Corporation is not prejudiced on account of institution or pendency of the present litigation and especially the fact that ad interim stay granted by the City Civil Court was operating from the date of filing of the suit on May 2, 1996, the necessary rider is incorporated in the operative order.

21. It is clarified that the observations in this judgement regarding the plaintiff's alleged rights under the aforesaid clauses of the agreement are for the limited purpose of deciding this Appeal from Order at the interlocutory stage and that the trial Court shall decide the suit without being influenced by the fact that this Court has granted interim injunction on the basis of clauses 22 and 23 of the agreement.

ORDER

22. This appeal is partly allowed. The order below the Notice of Motion passed by the City Civil Court, Ahmedabad in Civil Suit No. 2140/96 is hereby set aside and substituted by the following order:-

- (1) Pending the final disposal of Civil Suit No. 2140/96, the respondent herein (original defendant) Gujarat Industrial Investment Corporation Ltd. is restrained from selling its shares in Gujarat Themes Biosyn Limited (GTBL) without following the provisions of clauses 22 & 23 of the agreement dated May 11, 1981 executed between the defendant and the plaintiff subject to the rider that the defendant will be entitled to consider the average price of shares ruling on the Stock Exchange at which the shares were quoted for six months preceding the date of institution of the present suit, while communicating its offer to the plaintiff.
- (2) This order is passed without prejudice to the rights and contentions of the parties including the contentions of the respondent-defendant that

clauses 22 & 23 do not operate after expiry of the period of 15 years from the date of the aforesaid agreement, and that the plaintiff is not entitled to invoke the above clauses after transfer of its shareholding.

(3) In view of the facts and circumstances of the case, the trial court is directed to hear and decide Civil Suit No. 2140/96 as expeditiously as possible, and preferably by March 31, 1998.

23. In view of the aforesaid directions, the appeal as well as the Civil Application stand disposed of with no order as to costs.

Amp/-